

A trade-in of a vehicle, with its trade-in value agreed to by the parties to be determined at a later date, would generally qualify as a trade-in for purposes of the Illinois Retailers' Occupation Tax and Use Tax. See 86 Ill. Adm. Code 130.425 and 130.455. (This is a GIL.)

September 14, 2004

Dear Xxxxx:

This letter is in response to your letter dated February 4, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please view this letter as a general information request as to the application of the Illinois Department of Revenue's ('Department') trade-in rules for motor vehicles which are traded-in by a company in the purchase of new vehicles.

FACTS

The company at issue regularly purchases motor vehicles to be part of its fleet of motor vehicles used by this company in its business ('Company'). The Company is **not** in the business of leasing or renting motor vehicles. In purchasing the vehicles, the Company will trade-in vehicles currently owned by that Company to the selling dealership. The contract for sale and the bill of sale between the Company and the dealership will state that the value of the traded-in vehicles will be equal to the vehicles final auction price. After the contract for sale and bill of sale are entered into and title is transferred to the dealership, the traded-in vehicle is sent directly by the Company or its agent to an auctioneer for auction.

At auction, the auctioneer will sell the vehicle at the highest bid price. The sales price collected will be paid to the dealership as the title holder to the vehicle. The dealership will record on its sales invoice of the new vehicle being sold to the Company a trade-in

credit of the amount of the sales price received at the auction. The Company will then pay the net remaining sales price due for the new vehicle to the dealership.

Either the Company or the dealership, or their agents, will file the necessary Illinois Retailers' Occupation Tax or Use Tax forms (either ST-556 or RUT-25), whichever is applicable. The sale of the new vehicle and the trade-in will be recorded on these forms.

APPLICABLE LAW

The Illinois Use Tax imposes a tax on the privilege of using Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The rate of tax is 6.25% of the selling price of the tangible personal property. 35 ILCS 105/3-10.

In determining the 'selling price' of an item for sale, the consideration paid on the sale excludes 'the value of or credit given for traded-in tangible personal property with the item that is traded-in is of a like kind or character as that which is being sold.' 35 ILCS 105/2. In this regard, the Department has issued regulations governing the use and applicability of the trade-in provisions of the Illinois Retailers' Occupation Tax and Use Tax. 86 Ill. Admin. Code §130.455.

Under the Department of Revenue's Regulations, 'a dealer may reduce his gross receipts by the value of or credit given for a trade-in motor vehicle where...an individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle.' 86 Ill. Admin. Code §130.455(c)(1)(A). 'The value of a traded-in vehicle is the amount of value assigned to the vehicle without regards to outstanding debt owed on the traded-in vehicle by any party.' §130.455(b)(1).

ANALYSIS & CONCLUSION

In the transaction under consideration, the Company is trading in a vehicle to the dealership on the purchase of a new vehicle. The contract for sale, bill of sale and title paperwork transfers ownership of the traded-in vehicle to the dealership in the purchase of a new vehicle. The agreed value or price of the trade-in is set forth in the contract for sale and bill of sale as equal to the price to be received upon auction.¹

Because the Company has properly traded-in a used vehicle to the dealership in the purchase of a new vehicle, and the dealership accepted the trade-in for the purchase of a new vehicle and such is reflected on the sales invoice by the dealership and the appropriate sales/use tax forms, the above transaction qualifies as a trade-in for Illinois Retailers' Occupation Tax and Use Tax purposes.

As a result, we ask that the Department issue an information letter verifying that the above transaction meets all the relevant requirements of Regulation 130.455 and would qualify as trade-in under the Illinois Retailers' Occupation Tax and Use Tax.

If you have any questions or contemplate issuing an information letter different from that requested above, please call. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

Your letter does not indicate whether the trade-in is a simultaneous trade-in or involves advanced trade-ins. We cannot provide you with a binding response without reviewing the specific agreement between the company and the automobile dealer in the context of a private letter ruling. In general, a trade-in of like kind tangible personal property will be allowed even when the trade-in value of such property is agreed upon to be determined at a later date. See for example, General Information Letter ST-03-0200-GIL, which may be viewed under the sales tax "Sunshine" letter rulings listed within the Legal Research section of the Department's website described below.

All provisions of 86 Ill. Adm. Code 130.425 and 130.455 regarding traded-in property, including clear documentation of the transfers of title, must be complied with for the transactions to be considered valid trade-in transactions.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk

¹ Because the parties stipulated that the price is determinable at auction, a fixed price for the vehicle was thus set forth in the contract for sale and bill of sale. Under the Uniform Commercial Code, a sale will be considered as consummated and enforceable even if the price term is fixed by a future market price or so future agreed to price calculation. 810 ILCS 5/2 -305.